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March 16, 2005

BY ELECTRONIC AND OVERNIGHT MAIL

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 04-33 – Motion to Expand the Procedural Schedule

Dear Secretary Cottrell:

On behalf of the Competitive Carrier Coalition (which includes ACN, DSLnet, Focal, Lightship and RCN), the Competitive Carrier Group,[1] MCI, Conversent, CTC, and AT&T, enclosed for filing, please find:

MOTION TO EXPAND THE PROCEDURAL SCHEDULE

Pursuant to the Ground Rules established for this arbitration, seven (7) copies of this filing are attached. Please date-stamp the enclosed extra copy of this filing and return it in the attached, postage prepaid envelope provided.

Should you have any questions concerning this filing, please do not hesitate to contact us.

Sincerely,

Russell M. Blau
Philip J. Macres

Enclosure

cc: Tina Chin, Arbitrator
Jesse Reyes, Arbitrator
DTE 04-33 Service List

[1] The following members of the Competitive Carrier Group are parties to this Motion: Allegiance Telecom of Massachusetts, Inc., A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation, Broadview Networks Inc. and Broadview NP Acquisition Corp., ClearTel Telecommunications f/k/a Essex Acquisition Corp., DIECA Communications, Inc. d/b/a Covad Communications Company, DSCI Corp., IDT America Corp., KMC Telecom V, Inc., Talk America, Inc., XO Communications, Inc. and XO Massachusetts, Inc.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In re Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	Docket No. 04-33

MOTION TO EXPAND THE PROCEDURAL SCHEDULE

The undersigned CLECs ("CLECs") hereby move to expand the current procedural schedule in this proceeding. In particular, a hearing and related evidentiary procedural due dates need to be scheduled for the factual matters associated with Issue 3 of the March 4, 2005 Supplemental List of Issues to be Arbitrated in this proceeding. Under Issue 3, CLECs seek a Department factual determination regarding which Verizon wire centers are subject to the various unbundling criteria for loops and transport that the FCC established in its *Triennial Review Remand Order* ("*TRRO*").[1] Because the application of the criteria is dependant on facts that are likely to be in dispute, CLECs request that the procedural schedule be expanded as follows:

March 25:	Department Issues Protective Order
April 1:	Verizon Pre-filed Public and Confidential Testimony Due; CLEC Discovery Begins
April 22:	CLECs Pre-filed Public and Confidential Testimony Due; Verizon Discovery Begins
May 9:	Hearing
May 20	Post Hearing Briefs
May 27	Post Hearing Reply Briefs

[1] In their March 4, 2005 Motion to Amend Procedural Schedule, the undersigned noted in paragraph 12 that they would be filing this motion.

CLECs are compelled to file this motion for the reasons set forth below.

1. The Department established a schedule for this case at a January 5, 2005, public hearing and procedural conference. At that time, neither the effective date nor content of new FCC rules expected to govern the rights of the parties in this docket was known. Although the FCC had issued press releases on December 15, 2005, regarding its new rules, the rules had not yet been issued as of January 5, 2005.

2. In light of the uncertainty regarding the date and content of the new FCC rules, at the January 5, 2005, procedural conference, Arbitrator Chin "acknowledge[d] that some flexibility will be needed within the schedule. We'll take that into account as the need arises." Tr., Vol. A, 1/5/05, at 11-12.

3. On January 7, 2005, Verizon sought an amendment to the procedural schedule established by the Department. Verizon expressed surprise that it was being required to demonstrate that it was not already recovering the costs of routine network modifications and, in light of that putatively unexpected development, requested an extension of time to develop and analyze the requisite data. *See* Verizon Massachusetts' Motion To Amend The Procedural Schedule, at 1-2 (filed January 7, 2005). In the spirit of flexibility acknowledged by the Arbitrator at the procedural conference, no party objected to Verizon's request.[2]

4. On February 4, 2005, the FCC released the *TRRO*. That order provided the detailed rules that will govern certain changes to the parties' interconnection agreements which are at issue in this proceeding. In the Order, the FCC established, among other things, a "tiered" approach for identifying routes over which unbundled access to DS1, DS3,

[2] Although the Department granted Verizon's motion on February 4, 2005, Verizon later, on March 1, notified the Department that it did not intend to make the demonstration for which it sought an extension.

and dark fiber interoffice transport would be available.[3] The FCC held that CLECs should be able to obtain DS1 interoffice transport except on routes connecting a pair of wire centers each of which has 4 or more unmatched fiber-based collocators or 38,000 or more business access lines.[4] The FCC also held that CLECs should be able to obtain DS3 and dark fiber transport except on routes connecting wire centers each of which has 3 or more unmatched fiber-based collocators or 24,000 or more business access lines.[5]

5. With respect to high capacity loops, the FCC held that CLECs may obtain DS1 loops except to serve any building within the service area of a wire center with 60,000 or more business lines and 4 or more fiber-based collocators.[6] The FCC further found that CLECs may obtain DS3 loops except to buildings within the service area of a wire center with 38,000 business lines and 4 or more fiber-based collocators.[7]

6. In applying these tests, the FCC defined a "fiber-based collocator" and "business lines" as follows:

> Fiber-based collocator. A fiber-based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire

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[3] *See TRRO*, ¶¶ 111-124, Appendix B at 150-152 (setting forth the new FCC implementing regulations for dedicated transport, 47 C.F.R. § 51.319(e))

[4] *See TRRO*, ¶ 66.

[5] *See TRRO*, ¶ 66.

[6] *See TRRO*, ¶¶ 146, 178-181, Appendix B at 147 (setting forth the new FCC implementing regulations for DS1 loops, 47 C.F.R. § 51.319(a)(4)).

[7] *See TRRO*, ¶¶ 146, 174-177, Appendix B at 147-48 (setting forth the new FCC implementing regulations for DS3 loops, 47 C.F.R. § 51.319(a)(5)).

center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. § 153(1) and any relevant interpretation in this Title.

A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. The number of business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies (1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services, (2) shall not include non-switched special access lines, (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines."[8]

7. After the release of the *TRRO*, the Arbitrators requested the parties to file by March 4, 2005, a second joint stipulation of disputed issues to "update the Department on negotiations involving the TRO Remand Order and any other issue to be decided in this proceeding."[9]

8. On March 4, 2005, a Supplemental List of Issues to be Arbitrated was filed with the Department that CLECs and Verizon stipulated must be addressed that relate to the implementation of the *TRRO*. Issue 3 specifically asks "Should the DTE determine which central offices satisfy the various unbundling criteria for loops and transport? If so, which central offices satisfy those criteria?"

9. On March 4, 2005, the undersigned filed a Motion to Amend Procedural Schedule in order to permit the parties – and the Department – to properly reflect new

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[8] *See TRRO*, ¶¶ 102, 105, Appendix B at 145 (defining business lines and fiber-based collocator in the FCC's new implementing regulations, 47 C.F.R. § 51.5).

[9] D.T.E. 04-33, *Arbitrator Ruling On AT&T Motions To Amend The Procedural Schedule And For Extension Of The Judicial Appeal Period; And On Verizon's Motion For Leave To Amend The Petition* (February 7, 2005), at 6.

substantive issues arising from the FCC's recent issuance of unbundling rules in the *TRRO*. On March 8, 2005, the Arbitrators granted the motion.

10. In their March 4 motion, CLECs noted that they did not waive their right to request other schedule modifications that may be needed as a result of the *TRRO*. In particular, the CLECs explained that they,

> intend to seek additional process and schedule dates arising from the need to determine for purposes of the interconnection agreement the central offices that satisfy the FCC's criteria for application of the FCC's loop and dedicated [transport] unbundling rules. Given the urgency in obtaining a modification of the dates for non-hearing issues, the CLECs have not sought to address this further issue. They will file shortly a separate motion addressing the hearing related schedule, which schedule is not dependent upon the briefing schedule for the non-hearing issues.[10]

11. Arbitrator Chin stated that "bifurcating this proceeding is not efficient for the Department, or the parties."[11] In order to accommodate the need to address all issues at the same time (when some issues could not be identified until after the development of positions following the issuance of the *TRRO)*, she noted that while moving forward, the Department will "remain[] mindful of the possibility that future circumstances may warrant modification of the procedural schedule."[12]

12. As noted in CLECs' March 4 Motion, those "future circumstances are here." In the absence of a hearing, the Department would be unable to undertake a proper investigation of which wire centers satisfy the *TRRO*'s various unbundling criteria for loops and transport. The expanded schedule allows for the submission pre-filed testimony, discovery, a hearing and post hearing briefs relating to factual issues associated with Issue 3.

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[10] March 4, 2005 Motion to Amend Procedural Schedule, ¶ 12.

[11] D.T.E. 04-33, *Arbitrator Ruling On AT&T Motions To Amend The Procedural Schedule And For Extension Of The Judicial Appeal Period; And On Verizon's Motion For Leave To Amend The Petition* (February 7, 2005), at 6.

[12] *Id.*

Factual issues include, but are not limited to, how Verizon counts business lines and fiber-based collocators along with what data Verizon relies on in counting business lines and fiber-based collocators.

13. Given the history of this case, the frequent acknowledgements that flexibility is required, and the numerous motions from Verizon for extension and even stays of the existing procedural schedule, Verizon should be accommodating. However, Verizon rejected the CLECs' proposal to add an evidentiary phase to this proceeding. Consequently, CLECs are compelled to file this motion.

14. Verizon's position is indefensible. The *TRRO* specifically states that "We expect that incumbent LECs and competing carriers will implement the Commission's findings as directed by section 252 of the Act." Under Section 252(c), the Department must ensure that resolution of the issues being arbitrated "meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251."[13] Without investigating the facts associated with Issue 3 and having a hearing on them, the Department will be unable to do that. Moreover, the *TRRO* specifically requires CLECs to conduct a "reasonably diligent inquiry" that future loop and transport UNE orders are compliant with the *TRRO*. In this arbitration, CLECs are attempting to do just that.

15. At least some CLECs have submitted or plan to submit proposed contract language that would include lists of the wire centers where loop and transport facilities are no longer available as Section 251(c)(3) UNEs. The identification of such wire centers is therefore an open issue on which resolution is sought by those CLECs, and the Department is required to resolve each such issue in its disposition of this arbitration. See Section 252(b)(4)(C) ("The State Commission shall resolve each issue set forth in the petition and

[13] 47 U.S.C. § 252(c)(1).

the response"). The exclusion of this issue from the arbitration would therefore be improper.

16. CLECs have reason to question the list of wire centers that Verizon claims satisfy the FCC's criteria. For example, Verizon includes the Marlborough, Massachusetts central office among its list of large wire centers (60,000 business access lines and 4 fiber-based collocators) where it no longer is required to unbundle DS1 loops. Based on publicly available information as well as the characteristics of the Marlborough area, it is highly questionable that the Marlborough wire center meets the non-impairment test for DS1 unbundling relief. Consequently, there is reason to believe that Verizon is using an interpretation of the FCC criteria that is self-serving and would be rejected by any impartial third party.

17. Although Verizon has been asked by at least one of the CLECs to support its list of wire centers, Verizon has been unwilling to provide sufficient information that is needed to determine the accuracy of or the criteria that Verizon may be using to develop the list. In the absence of Department authorized discovery, it is not likely that CLECs will be able to obtain sufficient information to determine whether Verizon's list accurately satisfies a reasonable interpretation of the FCC's criteria.

18. Among the issues that Verizon's wire center list raises include: i) the accuracy and validity of the underlying ARMIS or other data on which the number of Verizon access lines was based, ii) the accuracy and validity of underlying data that was used to calculate UNE loops leased by CLECs in the applicable wire centers , iii) the methodology that was used to determine the number of access lines in a given wire center, including how old the ARMIS and UNE loop data is, and what methodology was used to ensure that special access, entrance facilities (formerly a UNE), and OCN transport were not

included in the loop data, (iv) to the extent that UNE loops leased by a CLEC typically result in a reduction in VZ business access lines, what adjustments were made to the ARMIS data to account for increases in UNE lines; (v) the identities of all fiber-based collocators in the wire center.

19. As demonstrated above, the application of the *TRRO*'s new loop and transport tests will require factually-intensive inquiries. Indeed, both CLECs and the Department need an opportunity to investigate the wire centers that Verizon claims satisfy the FCC's tests and Verizon's supporting documentation. In addition, both CLECs and the Department also need the opportunity to propound discovery on Verizon so they may determine whether Verizon's approach in applying the FCC's loop and transport tests and the assumptions Verizon uses in doing so comport with the *TRRO*.

20. The existing schedule, however, would not allow for this type of investigation. By contrast, the expanded schedule will allow for a proper evaluation by the Department regarding the merit and validity of the wire centers that Verizon claims where loops and transport are no longer available under Section 251(c)(3). Under the proposed schedule, the Department would issue a Protective Order on March 25.[14] Verizon would then be required to (a) submit testimony on April 1 that explains which of its central offices meet the FCC's loop and transport tests and (b) provide the methodology and assumptions it used in identifying them. It would also give CLECs an opportunity to submit responsive testimony three weeks later, *i.e.*, by April 22, if necessary. In addition, all parties would be given an opportunity to propound discovery on the testimony each party submits. Further,

[14] CLECs note that with this condensed schedule, it is imperative that CLECs have immediate access to Verizon's confidential information when it is filed. Therefore, the Protective Order must be issued prior to date that Verizon submits its testimony. The undersigned suggest that the Department issue a Protective Order that is similar to the one it issued in D.T.E. 03-60 on October 1, 2003.

the proposed schedule would allow for a hearing during the week of May 9 and submission of initial and reply post hearing briefs on May 20 and May 27, respectively. Moreover, given the Department's stated intent to render a final decision by June 30, 2005, the schedule would provide the Department with at least a month to render a decision on this issue.

21. In requesting that the procedural be expanded and to address initial concerns raised herein about the lack of support regarding Verizon's list of wire centers, CLECs also urge the Department to require Verizon to provide, in its initial pre-filed testimony, full and complete information that justifies Verizon's inclusion of each wire center on the list.[15] This information should include, but not be limited to, i) the underlying ARMIS data, ii) the underlying data that was used to calculate UNE loops leased by CLECs in the applicable wire centers , iii) additional information and description concerning the methodology that was used to determine the number of access lines in a given wire center, including how old the ARMIS and UNE loop data is, and what methodology was used to ensure that special access, entrance facilities (formerly a UNE), and OCN transport were not included in the loop data, (iv) to the extent that UNE loops leased by a CLEC typically result in a reduction in VZ business access lines, what adjustments were made to the ARMIS data to account for increases in UNE lines; (v) the identities of all fiber-based collocators in the wire center.

22. CLECs believe that this schedule provides sufficient due process in this proceeding as to Issue 3 and does so in a fair and impartial manner. In addition, the

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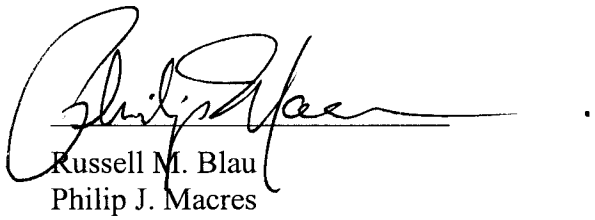
[15] At a minimum and given the relevancy and materiality of such information, the Department should admonish Verizon to provide such information with its pre-filed testimony. The Department should recognize that if Verizon fails to provide such information with its initial pre-filed testimony and given the accelerated schedule of this arbitration, Verizon would be engaging delay tactics in an effort to prejudice the preparation of CLEC responsive cases and their critique of Verizon's filing.

requested expanded schedule will not impact the procedural schedule as to issues that do not require a hearing. Therefore, no party will be prejudiced by it.

WHEREFORE, for the reasons set forth above, good cause exists for the Department to grant this motion and the undersigned CLECs request that the schedule be expanded as requested above.[16]

[16] In filing this motion, the undersigned CLECs do not waive their right to request other needed schedule modifications. The CLECs also reserve their objections to having *TRRO* issues arbitrated before good faith negotiations commence as Section 252 and/or interconnection agreements require.

Respectfully submitted,



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